

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re K. H., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

V.

K. H.,

Defendant and Appellant.

D052582

(Super. Ct. No. NJ12741B)

APPEAL from an order of the Superior Court of San Diego County, Laura H. Parsky, Judge. Affirmed with directions.

Appellant, minor K. H., contends (1) the San Diego County Juvenile Court erred in denying a motion to reconsider the Santa Clara County Juvenile Court's resolution of a Welfare and Institutions Code<sup>1</sup> section 241.1 petition regarding the termination of her

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

dependency because the latter court failed to follow the procedures mandated in section 241.1; (2) the commitment order was invalid under section 733; (3) appellant should not be required to register as a sex offender based on the reasoning in *People v. Hofsheier* (2006) 37 Cal.4th 1185 (*Hofsheier*); and (4) the commitment order does not correctly state the charges she admitted committing.

We conclude the San Diego County Juvenile Court did not err in denying the motion to reconsider the section 241.1 determination. We affirm the commitment order with directions that it be amended and a corrected copy be sent to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, stating that appellant admitted to committing a felony under Penal Code section 288a subdivision (b)(1), and specifying that appellant is not required to register as a sex offender based on the underlying offense.

#### FACTUAL AND PROCEDURAL BACKGROUND

Appellant was born in 1992. In 1998, the Los Angeles Department of Family and Child Services removed her from her mother's care because appellant had suffered severe neglect. Appellant was placed with a grandfather, and later removed to a group home. In 2004, she was placed into guardianship with a family friend, but the guardian could not deal with appellant's behavioral problems. In April 2005, dependency was reinstated. Appellant was placed at the Polinsky Children's Center in San Diego County.

In November, 2006, appellant was placed at the Starlight Community Treatment Facility in San Jose, Santa Clara County. On July 6, 2007, the Santa Clara County District Attorney filed a petition alleging that then 15-year-old appellant committed oral

copulation by force (Pen. Code, § 288a, subd. (c)(2)); oral copulation with a minor (Pen. Code, § 288a, subd. (b)(1)); sexual penetration by force (Pen. Code, § 289, subd. (a)(1)); sexual battery (Pen Code, §§ 242-243.4, subd. (e)(1)); and battery (Pen Code, §§ 242-243, subd. (a).)

On July 9, 2007, the Santa Clara County Juvenile Court found appellant was a ward of the court under section 602 and ordered her detained. The court, recognizing that San Diego County also had jurisdiction of appellant under section 300, requested San Diego County to prepare a report recommending which status would best serve the best interests of the minor and the protection of society pursuant to section 241.1. The court noted that the record did not have an address for appellant's mother, and appellant was unable to provide one.

In July 2007, both the San Diego Child Welfare Services and the Santa Clara Probation Department filed the reports; both recommended that appellant be adjudged a ward under section 602. The report by the Santa Clara Probation Department included statements by the following: the victims, appellant, the San Diego County social worker, and appellant's therapist at Starlight Adolescent Center. The report indicated that appellant's parents could not be located. On October 1, 2007, the Santa Clara County Juvenile Probation Department filed a report stating, "A joint recommendation that the minor's dependency status under section 300 be terminated and [section] 602 wardship be established is respectfully submitted to the court."

On October 1, 2007, appellant admitted in the Santa Clara County Juvenile Court one count under Penal Code section 288a, subdivision (b)(1) and one count under Penal

Code section 242-243, subdivision (a); the remaining counts were dismissed. The court stated it had read the reports submitted. Appellant was adjudged a ward under section 602, and her dependency status was terminated. The court ordered the matter transferred to the San Diego County Juvenile Court for disposition.

On January 30, 2008, appellant filed in the San Diego County Juvenile Court a motion to reconsider the section 241.1 ruling, and argued (1) the Santa Clara Juvenile Court never consulted her San Diego dependency attorney in ruling on the section 241.1 petition; (2) changed circumstances necessitated a new section 241.1 hearing because following the Santa Clara section 241.1 hearing, several charges against her were dismissed and (3) it would not benefit her to be committed to the California Youth Authority.

At a February 8, 2008, hearing on the motion, appellant's counsel contended that the Santa Clara County Juvenile Court should have transferred the case to Los Angeles County where her mother resided, instead of to San Diego County. The court rejected that argument, stating: "I think there's enough of connection to San Diego, and we have no idea whether her mother [is] in any position to have custody of her. [Appellant] hasn't lived with her mother in years, and she has been here in San Diego; she [has] been under the care and custody of the San Diego Juvenile Court for a significant period of time. Of all the counties that she has any connections to, I think that her ties to San Diego County are significant enough that I'm not going to exercise my discretion to transfer out." The court added, "[Appellant] has been waiting for four months and . . . has been suffering with the fact that she doesn't know what the placement [is] going to be; she isn't receiving

the potential treatment that she should be receiving in terms of proper counseling, in terms of other types of treatment, that no matter where she [is] placed she would be receiving. Instead we're going back and forth, and this really has been continued much too long."

The San Diego County Juvenile Court ruled it was "not in the best interest of the minor to reconsider the [section] 241.1" determination, and ordered her committed to a juvenile facility of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice for confinement for a maximum term of 3 years two months. At the time it made the commitment order, the court stated that appellant would have to register as a sex offender upon her release from the juvenile facility. This appeal followed.

## DISCUSSION

### I.

Appellant's opening brief states, "The problems that arise from this case have nothing to do with the decision of the Santa Clara County Juvenile Court to adjudicate the wardship petition. [Appellant] states that she is satisfied with the resolution of the petition and does not seek to challenge it . . . [¶] What [she] does challenge is the manner under which Santa Clara County sent the matter back to San Diego. [She] challenges the decision of the Santa Clara County to 'dismiss' the San Diego County proceedings and, therefore, its actions were unlawful and should not be accorded any deference by the San Diego Court."

Appellant's concession that she is satisfied with the adjudication of the wardship petition makes moot her contention on appeal that we should remand for the San Diego

County Juvenile Court to conduct a new proceeding under section 241.1.<sup>2</sup> Under that statute, "it is the juvenile court facing the problem of dual jurisdiction that must determine whether the minor should be treated as a dependent child or a delinquent minor." (*In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1013.)

"Section 241.1 requires that whenever a minor appears to fall within the description of both a dependent child and a delinquent ward, [Child Welfare Services] and the probation department must jointly 'initially determine which status will serve the best interests of the minor and the protection of society.' (§ 241.1, subd. (a).) Both departments present their recommendations to the juvenile court, which must then determine the minor's appropriate status. (*Ibid.*) A minor may not be both a dependent child and a delinquent ward of the court absent a written agreement between the juvenile court, [Child Welfare Services], and probation department . . . . (§ 241.1, subds.(d) & (e).)" (*In re Henry S.* (2006) 140 Cal.App.4th 248, 254.)

Besides being moot, this contention fails because appellant has not shown prejudice. Her satisfaction with the wardship adjudication is a concession that she does not seek an alternative outcome. We cannot disturb the juvenile court's disposition order absent a showing of prejudice. (Cal. Const., art. VI, § 13; *Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 119.)

---

<sup>2</sup> Appellant in her briefs has misplaced the legal authority for her contention. Any procedural defect came not from a failure to comply with section 241.1, but rather with California Rules of Court, Rule 5.512, subdivision (d)(11), which requires that a joint report be prepared for the court and must include, "a statement by any counsel currently representing the child."

Even addressing the substance of appellant's contention that the Santa Clara Juvenile Court failed to obtain a statement from her dependency attorney in San Diego and other interested parties, we conclude that appellant forfeited this contention because she did not object to the adequacy of that report in the Santa Clara County Juvenile Court, where the omission could have been remedied readily. Numerous courts have found that a minor's failure to object forfeits review of objections to the adequacy of — or even the lack of — various assessment reports in juvenile proceedings. (E.g., *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502 [failure to obtain assessment report required by section 366.26]; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339 [failure to request bonding study]; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-412 [failure to object to adequacy of assessment].) We discern no reason why this rule should not apply here as to the claim concerning the sufficiency of the joint assessment. We note that at the section 241.1 hearing appellant was represented by an attorney, who did not object to the court's election.

## II.

Appellant contends that under section 733, she should not have been committed to a juvenile facility of the Department of Corrections and Rehabilitation; and we should remand this matter to the San Diego Juvenile Court to commit her to an alternative facility.

Welfare and Institutions Code section 733 prohibits the commitment to a juvenile facility of an individual who "has been or is adjudged a ward of the court of the juvenile pursuant to [Welfare and Institutions Code s]ection 602, and the most recent offense

alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of [Welfare and Institutions Code s]ection 707, unless the offense is a sex offense set forth in paragraph (3) of subdivision (d) of [s]ection 290 of the Penal Code." (Welf. & Inst. Code, § 733, subd. (c).) Penal Code section 290 was subsequently revised and the successor statute, Penal Code section 290.008, refers to: "Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c)." Penal Code section 290.008, subdivision (c), in turn includes "any offense defined in . . . *paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, [Penal Code s]ection 288a.*" (Emphasis added.)

Despite the plain language of Penal Code section 290.008, subdivision (c), appellant mistakenly contends that section "only includes violations of subdivisions (c) and (d) of section 288a, not violations of subdivision (b)" and not, as here, violations of section 288a, subdivision (b)(1). We reject appellant's contention and conclude the trial court did not err by committing her to a juvenile facility.

### III.

The Attorney General concedes, and we agree, that under *Hofsheier, supra*, 37 Cal.4th 1185, 1208, appellant should not be required to register as a sex offender. After oral arguments in this case, Division Five of the First District Court of Appeal decided *In*



*re J.P.* (Jan. 7, 2009, No. A118858) \_\_Cal.Rptr.3d\_\_[2009 WL 33628], which reaches the same conclusion.

In *Hofsheier*, the California Supreme Court held that the Penal Code section 290 mandatory registration requirement for persons convicted of voluntary oral copulation of a minor violates the equal protection clause of the United States Constitution. This is because there is no rational basis for requiring registration of a person convicted of voluntary oral copulation of a minor (Pen. Code, § 288a, subd. (b)(1)), but not requiring registration of a person convicted of voluntary sexual intercourse with a minor (Pen. Code, § 261.5). (*Hofsheier, supra*, at pp. 1207-1208.) The court noted that a trial court retained discretion to order registration under a different section of the statute if it found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. (*Hofsheier, supra*, at pp. 1207-1208.)

Separately, the California Supreme Court has held that the trial court's discretionary powers to order registration as a sex offender under the successor statute, Penal Code section 290.006, applied only to adults because, "Adults are subject to conviction and sentencing; juveniles are not, unless they are remanded for trial as adults." (*In re Derrick B.* (2006) 39 Cal.4th 535, 545 (*Derrick B.*).)

Penal Code section 290.008 states that minors who violate Penal Code section 288a, subdivision (b)(1) are subject to mandatory registration. However, Penal Code section 290.008 does not include mandatory registration for those who violate Penal Code section 261.5 (sexual intercourse). Accordingly, under *Hofsheier, supra*, 37

Cal.4th 1185, it would violate the equal protection clause to subject appellant to mandatory registration. Moreover, under *Derrick B.*, *supra*, 39 Cal.4th 535, the court had no discretion to order her registration under Penal Code section 290.006 because she was not tried as an adult.

#### IV.

Appellant contends, and the People agree, that the commitment order should be amended to accurately reflect that appellant admitted to committing a felony under Penal Code section 288a, subdivision (b)(1), and not, as is currently listed, under Penal Code section 288a, subdivision (c)(2). We agree.

#### DISPOSITION

The commitment order is affirmed, and the San Diego County Juvenile Court is directed to amend it to state that K. H. admitted to a violation of Penal Code section 288a, subdivision (a)(1), and to specify she is not required to register as a sex offender based on the underlying offense and forward a corrected copy to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice.

---

O'ROURKE, J.

WE CONCUR:

---

BENKE, Acting P. J.

---

IRION, J.